

ERIC G. YOUNG, ESQ. (SBN 190104)
YOUNG LAW GROUP
2544 Cleveland Avenue, Suite 210
Santa Rosa, California 95403
Tel.: 707.343.0556
Fax: 707.327.4360
Email: eyoung@younglawca.com
E-Service: service@younglawca.com

Attorneys for Plaintiff
RONALD CUPP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

RONALD CUPP, an individual,

Plaintiff,

vs.

COUNTY OF SONOMA, a municipal
corporation; TENNIS WICK, in his
individual and official capacities; TYRA
HARRINGTON, in her individual and official
capacities; MARK FRANCESCHI, in his
individual and official capacities; TODD
HOFFMAN, in his individual and official
capacities; JESSE CABLK, in his individual
and official capacities; ANDREW SMITH, in
his individual and official capacities; and
DOES 1-50, inclusive.

Defendants.

CASE NO.:

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF
AND DAMAGES**

- 1) VIOLATION OF 42 U.S.C. § 1983
– VIOLATION OF FOURTH
AMENDMENT**
- 2) VIOLATION OF 42 U.S.C. § 1983
– VIOLATION OF FIFTH
AMENDMENT**
- 3) VIOLATION OF 42 U.S.C. § 1983
– VIOLATION OF FOURTEENTH
AMENDMENT**
- 4) VIOLATION OF 42 U.S.C. § 1983
- CONSPIRACY TO VIOLATE
FOURTH AMENDMENT**
- 5) VIOLATION OF 42 U.S.C. § 1983
– CONSPIRACY TO VIOLATE
FOURTEENTH AMENDMENT**
- 6) VIOLATION OF ART. I, § 7 OF
THE CALIFORNIA
CONSTITUTION**
- 7) VIOLATION OF ART. I, § 13 OF
THE CALIFORNIA
CONSTITUTION**
- 8) TRESPASS**
- 9) INVASION OF PRIVACY**

JURY TRIAL DEMANDED

"The question we confront today is what limits are upon this power of technology to shrink the realm of guaranteed privacy." -Kyllo v. United States

I.

1. This action is based upon, and seeks compensatory and injunctive relief to redress violations of the Civil Rights Act of 1872, 42 U.S.C. § 1983, and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, caused by Defendants, and each of them, acting under color of law, acting to promote or enforce unconstitutional or unlawful practices, policies, procedures, ordinances, resolutions, patterns of conduct, customs and usage of regulations adopted, employed or ratified by policy-making supervisors in doing or causing the following to occur:

(B) Submitting or causing the submission of a false or misleading affidavit of probable cause in support of an inspection warrant for the subject property to a judicial officer, giving Cupp neither notice nor an opportunity to be heard;

1 (D) Taking, without any compensation, the subject property by
2 disconnecting electricity and gas (“the power”) to the residence located at the subject
3 property, without just cause, arbitrarily and capriciously under the guise of local code
4 enforcement and nuisance abatement, and then refusing to restore the power to the
5 subject property until after this Court denied, in part, Defendant Andrew Smith’s motion
6 for summary judgment in *Cupp v. Smith*, Case No. 4:20-CV-03456-PJH;
7

8 (E) Taking, without any compensation, the subject property by enforcing
9 local rules, ordinances, or regulations against Cupp and the subject property; namely, but
10 not exclusively, by requiring Cupp to reduce the number of bedrooms in the residence at
11 the subject property from 4 bedrooms to 1 bedroom to approve a permit for the septic
12 system at the property which had already been approved many years prior; and
13

14 (F) Entering or causing another to enter upon the subject property through
15 the use of drones, and other means, without Cupp’s consent, invading Cupp’s privacy with
16 respect to the subject property, and intentionally causing Cupp to suffer severe emotional
17 distress.
18

19 2. The foregoing conduct by Defendants, and each of them, has occurred, and
20 continues to occur, as a result of unconstitutional policies, practices, procedures, or an
21 ongoing pattern or course of conduct that is without just cause, arbitrary and capricious,
22 malicious, oppressive, disregards Cupp’s constitutional and state law rights, and arises
23 from an improper motive on the part of Defendants, and each of them, amounting to a
24 malevolent intent that is designed to, and has, vexed, harassed, annoyed, caused financial
25 and pecuniary harm or damage to Cupp, made it unreasonably difficult or impossible for
26 Cupp to complete actions to bring the subject property into compliance with rules,
27 ordinances, or regulations imposed on Cupp by Defendants, and has resulted from an
28

1 improper purpose intended to cast a cloud on Cupp's title to the subject property,
2 diminish the value of the subject property, interfere with Cupp's use of the subject
3 property, devalue the subject property, and cause or require Cupp to unnecessarily
4 expend large sums of money to comply with Defendants' demands as alleged herein.
5

6 II.

7 **PARTIES, JURISDICTION & VENUE**

8 4. At all times relevant herein, Cupp was an individual who either resided at the
9 subject property; or was, and is, the owner of record of the subject property, and is
10 entitled to the full panoply of rights, privileges, and protections of the United States
11 Constitution, the California Constitution, California statutory law, and the common law.
12

13 5. Cupp is informed and believes, and thereon alleges, that Defendant TENNIS
14 WICK ("Wick") was, at all relevant times, a resident of Defendant COUNTY OF SONOMA
15 ("the County"), and he was, and is, the Director of the Permit and Resources Management
16 Department (also known and referred to herein as "PRMD" or "Permit Sonoma"), an
17 official government agency within the County, and is, by reason of the authority vested in
18 him by the Sonoma County Code of Ordinances, Chapter 7, Art. I, Sec. 7-2, "the Chief
19 Building Official" for and on behalf of the County. Section 7-2 further provides:
20

21 "The chief building official shall be the director of the permit and resource
22 management department or his or her designee. The chief building official
23 shall supervise and be responsible for all inspection work required for the
24 proper enforcement of regulations imposed by this chapter except those
25 duties specifically delegated herein to the county public health officer. The
26 chief building official shall perform related duties as directed by the board of
27 supervisors. The chief building official shall appoint such deputies and
28 assistants as may be authorized by the board of supervisors."

(Ord. No. 5754 § 1 (b), 2007; Ord. No. 5399 § 1, 2003; Ord. No. 4906 § 3, 1995.) Wick is
sued in his individual and official capacities.

1 6. Cupp is informed and believes, and thereon alleges, that Defendant TYRA
2 HARRINGTON (“Harrington”) was, at all relevant times, a resident of Defendant
3 COUNTY OF SONOMA (“County”), and that she was, and is, a Code Enforcement
4 Manager, and is hereby sued in her individual and official capacities.
5

6 7. Cupp is informed and believes, and thereon alleges, that Defendant MARK
7 FRANCESCHI (“Franceschi”) was, at all relevant times, a resident of Defendant COUNTY
8 OF SONOMA (“County”), and that he was, and is, a Code Enforcement Supervisor, and is
9 hereby sued in his individual and official capacities.
10

11 8. Cupp is informed and believes, and thereon alleges, that Defendant TODD
12 HOFFMAN (“Hoffman”) was, at all relevant times, a resident of Defendant COUNTY OF
13 SONOMA (“County”), and that he was, and is, a Code Enforcement Inspector II employed
14 by County, and is hereby sued in his individual and official capacities.
15

16 9. Cupp is informed and believes, and thereon alleges, that Defendant JESSE
17 CABLK (“Cablk”) was, at all relevant times, a resident of Defendant COUNTY OF
18 SONOMA (“County”), and that he was, and is, a Senior Code Enforcement Inspector
19 employed by County, and is hereby sued in his individual and official capacities.
20

21 10. Cupp is informed and believes, and thereon alleges, that Defendant ANDREW
22 SMITH (“Smith”) was, at all relevant times, a resident of Defendant COUNTY OF
23 SONOMA (“County”), and that he was, and is, a Code Enforcement Inspector employed
24 by County, and is hereby sued in his individual and his official capacities.
25

26 11. Cupp is informed and believes, and thereon alleges, that Defendant COUNTY
27 OF SONOMA was, at all relevant times, a municipal corporation that acted jointly with
28 the other Defendants named herein, including DOES 1-50, inclusive, directly and
indirectly, by establishing the unconstitutional policies or procedures complained of

1 herein; or by instituting, approving, encouraging, or ratifying the patterns, practices, or
2 courses of conduct engaged in by the other Defendants named herein, including DOES 1-
3 50, inclusive, before, on and after February 15, 2019, as alleged herein.

4
5 12. Cupp sues each and all individual Defendants in their individual and personal
6 capacities, but also in their official capacities by reason of the fact each Defendant, at all
7 times alleged herein, was acting under color of law when engagin in, directing, ordering,
8 approving, ratifying or undertaking the wrongdoing complained of herein.

9
10 13. Cupp does not know the true names and capacities of those defendants sued
11 herein as DOES 1-50, inclusive, whether they be individuals, agents, representatives,
12 corporations, associates, partners, departments, subdivisions, or other business or
13 governmental entities, and therefore, Cupp sues these defendants by fictitious names.

14 Cupp is informed and believes, and thereon alleges, that each of these fictitiously named
15 defendants has harmed Cupp, or caused damage to Cupp, through varied intentional
16 Constitutional violations and deprivations, or they have violated state or common law, in
17 a manner that is equally reprehensible, outrageous, and vindictive as those Defendants
18 named herein. Cupp will seek leave to amend this Complaint to set forth the true names
19 and capacities of such defendants when the information is ascertained.
20

21 14. Cupp is informed and believes, and thereon alleges, that each of the Defendants
22 named herein, including defendants sued herein as DOES 1-50, inclusive, in some legally
23 recognizable manner acted in concert with, as the agent of, employee, representative, or
24 assign of each of the other Defendants; or the conduct of the Defendants named herein,
25 including defendants sued herein as DOES 1-50, inclusive, was done at the behest of the
26 other Defendants, with their express or implied approval, encouragement, acquiescence,
27 or was ratified by the other Defendants, and each of them, after the fact.
28

15. This Court has jurisdiction over the claims set forth in this Complaint pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (deprivation of civil rights and conspiracies), 28 U.S.C. § 2201 (declaratory relief), and 42 U.S.C. § 1983 (civil rights violations actionable against states). This Court has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1367.

16. Venue in this Court is proper pursuant to 28 U.S.C. §1391b in that at least one Defendant resides in this District, and the events giving rise to Cupp's claims occurred in this District.

III.

COMPLIANCE WITH CAL. GOVT. TORT CLAIM PROCEDURES

17. Cupp submitted a formal claim to Defendants on July 15, 2022 pursuant to California Government Code section 910. The notice specifically references both the June 1, 2022 drone fly-over of the subject property as well as the March 27, 2020 drone flyover, and further alleged that both flyovers were conducted without warrants and constituted a “pattern or practice by County officials acting in concert to violate Claimant’s private property interests and civil rights.” Attached hereto as ***Exhibit A***, and incorporated herein, is a true and correct copy of Cupp’s July 15, 2022 claim.

18. On August 25, 2022, the County mailed notice of their rejection of Cupp's July 15, 2022 claim bearing the date August 25, 2022. In its notice rejecting Cupp's July 15, 2022 claim, the County referenced a prior claim Cupp had made dated August 4, 2020. Attached hereto as ***Exhibit B***, and incorporated herein, is a true and correct copy of the County's August 25, 2022 rejection letter to Cupp.

19. Cupp's August 4, 2020 claim was filed as a result of the warrantless entry on July 30, 2020, and that claim specifically references July 30, 2020 as the Date of Incident



1 on the County's claim form. Cupp's August 4, 2020 claim makes no mention of drones
2 whatsoever, nor does it allege a "pattern and practice" of unconstitutional misconduct by
3 Defendants.

4
5 20. On August 29, 2022, realizing that the County had evidently misapprehended
6 the scope of Cupp's July 15, 2022 claim, Cupp submitted a clearly marked "Amended
7 Claim" – still well-within the 6-month time requirement – referencing the drone flyovers,
8 and alleging:

9 "…[S]uch conduct evidences and is indicative and representative of a
10 pattern, practice, or repeated course of conduct approved, authorized, or
11 ratified by County and other named officials acting in concert…"

12 Cupp also added a claim under the California constitution, Article I, Secs. 7 & 13 and
13 removed a claim made pursuant to Civil Code section 1708.8. Attached hereto as ***Exhibit***
14 **C**, and incorporated herein, is a true and correct copy of Cupp's amended claim to the
15 County.

16
17 21. Both the July 15, 2022 claim and the August 29, 2022 amended claim were
18 personally delivered and stamped received by the County. Cupp's amended claim
19 contained different and additional allegations requiring a further response from the
20 County. The County had forty-five (45) days from August 29, 2022 to respond, which
21 would have been up to and including October 13, 2022. No agreement to extend that date
22 was made. To date, the County has not replied or otherwise even acknowledged Cupp's
23 amended claim. Thus, the amended claim was deemed rejected on October 14, 2022.

24
25 22. As a result, the County has waived any defense to untimeliness of Cupp's
26 amended claim. (Cal. Govt. Code §§ 911.3(b), 913). In addition, Cupp's statute of
27 limitations on his state law claims is thereby extended by two (2) years from the date of
28 accrual as stated in the amended claim, which was June 1, 2022, giving Cupp until June 1,

1 2024 to file suit on his state law claims. (Cal. Govt. Code, § 945.6.) Thus, Cupp brings suit
2 for violation of his state constitutional, statutory and common law rights arising from the
3 County's warrantless use of drones, and other unconstitutional methods, to search his
4 property within the statutorily prescribed time pursuant to California Government Code.
5

6 23. The remainder of Cupp's counts as set forth herein arise under federal
7 constitutional law and, thus, are not subject to California's Government Tort Claim
8 procedures.

9 IV.

10 FACTS COMMON TO ALL CAUSES OF ACTION

11 **A. County Enacts Ordinance Authorizing "Code Enforcement 12 Enhancement Program"**

13 24. On March 27, 2017, under the moniker "Code Enforcement Enhancement
14 Program" ("CEEP"), County Counsel (at the time, Bruce Goldstein) and Defendant Wick
15 presented Agenda Item 26 to the County Board of Supervisors, which was approved.
16 Attached hereto as **Exhibit D**, and incorporated herein, is a true and correct copy of
17 Agenda Item 26.
18

19 25. It was asserted in Agenda Item 26 that CEEP was needed to address Permit
20 Sonoma staffing reductions that had occurred in previous years, which had allegedly led
21 to a decrease in revenue generated by Permit Sonoma for the County.
22

23 26. Rather than being a "program" to hire more Code Enforcement Inspectors to
24 address the alleged backlog of cases and revenue shortfall, CEEP proposed hiring one
25 Code Enforcement Manager, which ultimately turned out to be Defendant Harrington,
26 who on information and belief is a former Deputy Sheriff with the Sonoma County
27 Sheriff's Department.
28

1 27. According to CEEP, Defendant Harrington’s mandate is “to oversee and
2 coordinate violation remediation efforts to both increase cost recovery and reduce case
3 backlog.” (Exhibit D, “Recommended Actions,” (A), page 1 of 8, emphasis added.) In
4 other words, Defendant Harrington’s job was, and is, to increase the revenue generated by
5 Permit Sonoma for the County. Indeed, according to CEEP, 100% of Defendant
6 Harrington’s salary, which on information and belief was or is at least \$154,292 (as of
7 2018) or more in salary and benefits annually¹, was expected to be generated from
8 increases in cost recovery. (Exhibit D, “Executive Summary,” page 4 of 8; “Narrative
9 Explanation of Fiscal Impacts,” page 7 of 8, emphasis added.)
10

11 28. On information and belief, CEEP, which represents official County policy set
12 into effect by the County Board of Supervisors, gave, and continues to give, a powerful
13 incentive and motivation to Defendant Harrington to not only aggressively pursue “cost
14 recovery” on behalf of the County herself, but to instigate, encourage, or mandate those
15 working under her at PRMD, such as Defendants Franceschi, Hoffman, Smith, Cablk, and
16 others, including DOES 1-50, to aggressively generate as much revenue as possible for the
17 County. Indeed, the policy inasmuch encourages this by stating:
18
19

- 20 • “Aggressive code enforcement actions can also serve as an upstream
21 investment...” (Exhibit D, “Executive Summary,” page 1 of 8.)
- 22 • “[T]his item recognizes the effectiveness of quick and aggressive litigation
23 to resolve violations...” (Exhibit D, “Executive Summary, page 2 of 8.)
- 24 • “The decline in cases and corresponding decline in [cost] recovery is due to
25 the elimination of the Division manager and reduction in staffing.” (Exhibit
26 D, “Discussion,” page 3 of 8.)
- 27 • “The new manager position will facilitate the resolution of more complaints,
28 as well as more Code Enforcement cases going to hearing, which together
are expected to generate approximately \$600,000 per year in additional

¹ <https://calsalaries.com/tyra-harrington-4899625>.

1 cost recovery (\$12,000 per hearing with an additional 50 cases going to
2 hearing.” (Exhibit D, “Discussion,” page 4 of 8.)

3 29. Additionally, CEEP proposed what it called “a number of minor policy
4 modifications and delegations” and “policy modifications to increase effectiveness.”
5 (Exhibit D, “Executive Summary, page 2 of 8; “Discussion,” page 5 of 8.) What this
6 innocuous sounding phrase means is that the County Board of Supervisors delegated their
7 authority to “bypass the administrative process” and file a lawsuit to abate any violations.
8 This delegation of authority gave Defendant Wick, together with County Counsel, the
9 unfettered authority to declare property uses as constituting “an immediate threat to
10 public health and/or safety” with no guidance on to how they were to define these terms.
11

12 30. Furthermore, CEEP proposed to “streamline” the administrative hearing
13 process” by creating an “Administrative Citation Program.” In effect, this proposal, which
14 was also approved as official policy by the County’s Board of Supervisors, allowed Permit
15 Sonoma to simply bypass certain procedural steps the department had previously taken
16 when dealing with property owners, and instead, encouraged Permit Sonoma to
17 immediately cite property owners with violations and assess penalties of one kind or
18 another. Stated differently, this Administrative Citation Program conferred a virtually
19 unfettered right on the part of Defendants Wick and Harrington to speed up the cost
20 recovery process, and increase “citation fee revenue” while running roughshod over the
21 constitutional due process rights of property owners within the jurisdiction of the County.
22

23 31. On information and belief, CEEP was not fully implemented by the County until
24 late in 2018. In the interim, on the night of October 8, 2017, a historic wind event led to
25 one of the worst firestorms in Sonoma County history, followed by almost three weeks of
26 fire. In total, the Nuns, Tubbs, and Pocket Fires (together comprising the Sonoma
27 Complex Fire) burned over 110,700 acres in Sonoma and Napa counties. 24 lives were lost
28

1 as a result of the fires. 6,997 structures were destroyed, resulting in direct losses
2 exceeding \$7.8 billion according to the California Insurance Commissioner. 25% of the
3 destruction occurred on protected or open land in Sonoma County.² The cost to the
4 County itself totaled at least \$18.1 million.³ On information and belief, a significant
5 portion of the County's Code Enforcement efforts were either eased or diverted as a result
6 of the Sonoma Complex Fires, or at least explains, in part, why CEEP's implementation
7 was delayed until late in 2018.

9 **B. Defendant Smith Conducts Warrantless Search of the Subject**
10 **Property on February 15, 2019**

11 32. On February 15, 2019, amidst and pursuant to the enactment and
12 implementation of these unconstitutional policies and procedures which had, and
13 continue to have, the effect of encouraging overly aggressive and intrusive inspection and
14 Code Enforcement actions on the part of officials working for Permit Sonoma, Defendant
15 Smith - a subordinate Code Enforcement officer who was a trainee at the time, only on the
16 job for a few months, and was working under the direct supervision of Defendants
17 Harrington and Franceschi, entered onto the subject property without an inspection
18 warrant based on a confidential complaint of unpermitted construction occurring at the
19 subject property.
20
21

22 33. Defendant Smith entered the subject property despite, admittedly, not having
23 Cupp's consent or exigent circumstances, nor did Defendant Smith have the consent of
24
25
26

27 ² "2017 Sonoma Complex Fires." <https://sonomavegmap.org/firestory/index.html>, accessed March 6, 2023.

28 ³ Varian, Ethan & Callahan, Mary. "Initial wildfire costs reach \$18.1 million for Sonoma County." Press-Democrat: August 22, 2020. <https://www.pressdemocrat.com/article/news/live-updates-walbridge-fire-continues-to-grow-overnight/>, accessed March 6, 2023.

1 the entity he mistakenly thought owned the subject property at the time, Federal National
2 Mortgage Association or “Fannie Mae.”

3 34. Defendant Smith questioned a workman on the subject property at the time
4 and learned the owner was not present on the property. Rather than leave at that time,
5 Defendant Smith proceeded to wander about the subject property, searching it, and
6 taking photographs.

7
8 35. As a result of this warrantless search, Smith issued two Notices and Orders
9 against Cupp for various violations of the Sonoma County Code, including unpermitted
10 construction, junkyard conditions, and occupancy violations (“the 2019 Citations”).
11 Attached hereto as ***Exhibit E***, and incorporated herein, are true and correct copies of the
12 2019 Citations that resulted from Defendant Smith’s warrantless search of the subject
13 property. The 2019 Citations refer to Violation Nos. VCM19-0123, VPL19-0130, VBU19-
14 0076, VBU19-0077, and VBU19-0078.

15
16 36. This warrantless search by Smith is the subject of the related matter, *Cupp v.*
17 *Smith*, Case No. 4:20-CV-03456-PJH, and the citations that followed, were executed
18 pursuant to the unconstitutional policies and procedures promulgated by the County
19 through Agenda Item 26 and as applied as the County’s custom, practice and procedure.

20
21 **C. County Initiates Abatement Proceedings Based on Smith’s**
22 **Warrantless Search**

23 37. On April 19, 2019, Defendant Smith sent two letters to Cupp entitled “Civil
24 Penalties Due and Payable.” According to these two letters, as of April 19, 2019, Cupp
25 owed a total of \$22,680 in civil penalties, which accrue at the rate of \$90/day per
26 violation. From these letters, it appears that Violation Nos. VBU19-0076, 0077, and 0078
27 are considered one violation; whereas, Violation No. VPL19-0130 is considered a second
28 violation, meaning that Cupp was incurring per diem civil penalties of \$180 as a result of

1 the 2019 Citations. Attached hereto as **Exhibit F**, and incorporated herein, are true and
2 correct copies of these letters. These letters refer back to the violation numbers listed on
3 the 2019 Citations.

4
5 38. On May 13, 2019, *nearly one month later and prior to notice of an Abatement*
6 *Hearing*, the County recorded two Notices of Abatement Proceedings against the subject
7 property with the Sonoma County Assessor-Recorder's Office – Document No.
8 2019039697 and 2019039721 (“the Abatement Proceedings Notices”). The Abatement
9 Proceedings Notices continue to encumber the subject property to the present day, casting
10 a cloud on Cupp's title to the subject property. Attached hereto as **Exhibit G**, and
11 incorporated herein, are true and correct copies of the Abatement Proceedings Notices.

12
13 39. On August 28, 2019, *over two, additional months later*, the County mailed
14 Cupp a Notice of Abatement Hearing (“the Hearing Notice”). Attached hereto as **Exhibit**
15 **H**, and incorporated herein, is a true and correct copy of the Hearing Notice. In the
16 Hearing Notice, the County advised Cupp that he would be given the opportunity to have
17 a hearing, call witnesses, and present evidence.

18
19 40. The Abatement Hearing did not commence until December 11, 2020, in part
20 due to COVID-19 restrictions. Meanwhile, Cupp continued to incur civil penalties of at
21 least \$180/per diem.

22
23 **D. Permit Sonoma Comes Under Fire From Local Press for Over-**
Promising and Under-Delivering Through CEEP

24 41. On August 9, 2019, a local reporter, Tyler Silvy, authored an unflattering article
25 in the Sonoma County Press-Democrat, accusing Defendant Wick as head of Permit
26 Sonoma with over-promising and under-delivering through what started as the CEEP
27 policy. Attached hereto as **Exhibit I**, and incorporated herein, is a true and correct copy
28 of Silvy's article downloaded from the Sonoma County Press-Democrat website.

1 42. According to the article, the program had been implemented for approximately
2 one year, and only 2 administrative citations had been issued; yet, according to Silvy, the
3 program had cost the County thousands of dollars. On information and belief, pressure
4 from bad press such as Silvy's article also prompted Defendants and the County to step up
5 their Code Enforcement activities, at whatever cost to the constitutional rights of property
6 owners in the County.
7

8 **E. County Promulgates Standard Operating Procedures on the Use of**
9 **Unmanned Aircraft Systems (UAS) (a.k.a. "Drones")**

10 43. Shortly afterwards, on or about September 10, 2019, the County, acting
11 through Permit Sonoma, promulgated a five-page policy and procedure document
12 entitled "7.0 Standard Operating Procedures on the Use of Unmanned Aircraft Systems
13 (UAS) (i.e., "drones") ("the drone policy"). Attached hereto as **Exhibit J**, and
14 incorporated herein, is a true and correct copy of the drone policy.
15

16 44. "UAS," or "Unmanned Aircraft Systems," is an acronym that is often associated
17 with vehicles more commonly described as "drones." UAS refers to "an aircraft and its
18 associated elements which are operated with no pilot on board."⁴ "Drones" are also
19 frequently referred to as UAVs, or "Unmanned Aerial Vehicles."⁵ For simplicity and
20 consistency herein, Cupp will continue to refer herein to such vehicles and systems
21 primarily as "drones."
22

23 45. According to the United States Department of Defense, "drones" are
24 categorized as follows⁶:
25
26

27 ⁴ Nagel, Lauren. "Types of Drones and UAVs (2023)." January 19, 2023.
28 <https://www.tytorobotics.com/blogs/articles/types-of-drones>.

⁵ *Ibid*.

⁶ Wikipedia. "Unmanned aerial vehicle." Footnotes 21, 22.

https://en.wikipedia.org/wiki/Unmanned_aerial_vehicle#cite_note-uavclassificationA-21, accessed March 6, 2023.

Group: ♦	Group 1 ♦	Group 2 ♦	Group 3 ♦	Group 4 ♦	Group 5 ♦
Size	Small	Medium	Large	Larger	Largest
Max take-off wt	< 20 lb (9.1 kg)	> 20 & < 55	> 55 & < 1320	>1,320 lb (600 kg)	>1,320 lb (600 kg)
Operating altitude	< 1,200 ft (370 m)	< 3,500 ft (1,100 m)	< 18,000 ft (5,500 m)	< 18,000 ft (5,500 m)	> 18,000 ft (5,500 m)
Speed	< 100 kn (190 km/h)	< 250 kn (460 km/h)	< 250 kn (460 km/h)	Any speed	Any speed

46. Drones can also be classified based on range and endurance, size, weight, altitude, and degree of autonomy. Some drones are remotely piloted aircraft, some offer intermediate degrees of autonomy, and some are fully autonomous.⁷ At this time, it is not known what category of drones the County has acquired for Permit Sonoma; only that it has acquired one or more drones, nor is it known specifically what capabilities these drones have. On information and belief, however, Permit Sonoma's drones are remotely controlled but may have some features that are semi-autonomous. On further information and belief, Permit Sonoma's drones have the ability to fly at altitudes that are above 400 feet and below 400 feet, take high-resolution digital photographs, and record high-resolution video footage. In all respects, Permit Sonoma's drones, when used to conduct inspection searches of private property, enhance the senses of Code Enforcement officers such as the Defendants beyond what an ordinary human is capable of, and as such, require a warrant prior to their use to inspect and search private property. (Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409 (2013); Kyllo v. United States, 533 U.S. 27 (2001).)

47. The County's drone policy was authored, at least primarily, by Defendant Harrington, and Defendant Harrington also reviewed the drone policy. The drone policy

⁷ Wikipedia. "Unmanned Aerial vehicle." Footnote 24. https://en.wikipedia.org/wiki/Unmanned_aerial_vehicle#cite_note-uavclassificationA-21, accessed March 6, 2023.

1 was reviewed by County Counsel's office acting through Holly Rickett, who is not named
2 as a Defendant herein. Most importantly, however, the drone policy was approved by
3 Defendant Wick acting in his capacity as Permit Sonoma Director, evidencing Defendant
4 Wick's role as the policy-making official for the County's Permit & Resources
5 Management Department as further alleged herein.
6

7 48. The County operates one or more websites available to the public which discuss
8 a variety of topics related to the County's many activities and departments, including the
9 policies and procedures that apply to the operations of Permit Sonoma. Significantly,
10 however, the County did not publish its drone policy on the "Internet." Instead, the drone
11 policy was published solely on the "Intranet." Cupp alleges on information and belief that
12 the use of the word "Intranet" on page 4 of 5 of Exhibit F refers to the County's private
13 Intranet. An Intranet is a local, restricted communications network built using World
14 Wide Web software, which is available to limited numbers of individuals (typically a work
15 group or similar closed group) and not to members of the general public.⁸
16

17 49. On information and belief, Cupp alleges the County and Defendants Wick and
18 Harrington deliberately chose not to publish its new drone policy on the Internet in order
19 to keep the drone policy, and Permit Sonoma's use of drones to conduct warrantless
20 searches of private property based on the drone policy, secret from the people of the
21 County of Sonoma.
22

23 50. On information and belief, at or about the same time, Permit Sonoma executed
24 a contract with a private drone operator to conduct aerial surveillance over private
25 properties in the County of Sonoma through the use of drones. Attached hereto as
26
27

28

⁸Berry, Louise. "Intranet v. internet: what's the difference, and why does it matter? Interact: November 13, 2019.
<https://bit.ly/3WgoTbi>, accessed December 15, 2022.

1 **Exhibit K**, and incorporated herein, is a true and correct copy of an exhibit to that
2 contract, entitled “Exhibit A: Scope of Work – Services to be Provided.” On information
3 and belief, this contract was awarded to an individual named Anthony Cinquini
4 (“Cinquini”). At this time, it is not known whether Mr. Cinquini ever operated a drone to
5 search the subject property; thus, he is not named as a defendant herein. Cupp reserves
6 the right to amend this Complaint, however, should discovery reveal Cinquini was
7 involved in such activities, as Cupp may have additional rights and remedies against
8 Cinquini.
9

10
11 51. On information and belief, this contract for a drone operator was not opened
12 for public bidding because, once again, Defendants desired to keep the drone-related
13 activities of Permit Sonoma, including the contract referencing the Scope of Work, secret
14 from the people of the County of Sonoma.

15
16 52. The County’s drone policy and Scope of Work were promulgated prior to a
17 warrantless drone search of the subject property that occurred on March 27, 2020, which
18 is alleged in further detail below. Thus, the warrantless drone search of the subject
19 property in March 2020 occurred pursuant to and was guided by the County’s drone
20 policy. On information and belief, the March 27, 2020 warrantless use of a drone to
21 search the subject property was conducted by Defendants Hoffman and Cablk, acting
22 pursuant to the County’s drone policy, which was, itself, promulgated as part of Agenda
23 Item 26 approved by the County’s Board of Supervisors, and Defendants Hoffman and
24 Cablk were acting at the direction and under the supervision of the remaining Defendants,
25 and each of them, or these Defendants ratified Defendants Hoffman and Cablk’s
26 unconstitutional actions after they were committed.
27
28

1 53. Under its terms, on pages 1-2 of 5, the County's drone policy provides, in
2 pertinent part:

3 "Approved Use: Approved Permit Sonoma uses of a UAS include
4 investigations of complaints received about alleged violations of the Sonoma
5 County Code. These inspections of unpermitted and/or illegal land uses
6 include, but are not limited to violations of zoning regulations, such as
7 cannabis cultivation non-operative motor vehicle storage yards, and
8 junkyard conditions. A UAS may also be employed for complaints and/or
9 investigations alleging unpermitted construction, grading, and drainage
10 improvements/obstructions....

11 Prohibited Use: The UAS video surveillance equipment shall not be used: to
12 conduct surveillance or inspection activity without a reasonable suspicion of
13 unpermitted or illegal actions; to target people; to harass, intimidate, or
14 discriminate against any individual or group; or to conduct personal
15 business of any type....

16 GENERAL

17 Small unmanned aircraft systems (UAS) may be utilized for inspections of
18 private property to detect violations of the Sonoma County Code when other
19 means and resources are not available or are less effective. Permit Sonoma
20 shall make every attempt to respect and observe existing privacy rights on
21 private property. Permit Sonoma shall only conduct UAS take-offs and
22 landings from public property or public right of way...

23 Permit Sonoma's use of UAS shall focus primarily on expanses of land (e.g.,
24 "open fields") in which private property owners have knowingly exposed
25 unpermitted structures and uses to aerial vantage points. While a Permit
26 Sonoma UAS pilot is operating a UAS they will take steps necessary to
27 protect privacy and private property rights by (1) turning on photographic
28 equipment only when the UAS is positioned close to the suspected violation
or unpermitted use; (2) launch UAS as close to the suspected unpermitted
property and/or property use as possible to limit potential exposure to other
properties; (3) ensure all UAS recording devices are focused on the areas
necessary to support the mission and to minimize the inadvertent collection
of data about persons or uninvolved places. Any inadvertently collected data
will be immediately destroyed upon review by the Code Enforcement
Manager or Supervisor.

Permit Sonoma will conduct UAS aided inspections on properties where
Permit Sonoma staff has reason to believe unpermitted building or illegal
land use violations are occurring. Reasonable suspicion will be based on
citizen complaints and/or staff observations coupled with any other facts
that suggest violation of the Sonoma County Code.

Data Retention and Processing

1 All UAS recorded data shall be reviewed and evaluated for evidentiary value
2 by the Code Enforcement Manager or Supervisor. Data of identifiable
3 individuals not intended to be used as evidence shall not be retained. All
4 retained data shall be maintained or destroyed pursuant to County retention
5 policies....

6 All UAS flights must be pre-approved by the Code Enforcement Manager or
7 Supervisor and will be reviewed by the Code Enforcement Manager or
8 Supervisor to ensure that they are conducted in accordance with Permit
9 Sonoma policy, FAA regulations, state and federal law, and with due regard
10 for public privacy.”

11 54. On information and belief, at all relevant times, the Code Enforcement
12 Manager referred to in the County’s drone policy was, and is, Defendant Harrington, and
13 the Supervisor referred to in the County’s drone policy was, and is, Defendant Franceschi.

14 55. Additionally, the Scope of Work states, in pertinent part:

15 “Contractor shall only gather aerial data upon receipt of written
16 authorization from either a Senior Code Enforcement Inspector, the Code
17 Enforcement Supervisor or the Code Enforcement Manager of Permit
18 Sonoma....

19 Contractor shall accompany a written summary for each request that
20 includes the name and contact information of the employee that collected
21 the data ,the date the data was collected, clearly outlined parcel and address
22 information as well as detailed GPS coordinates and any other information
23 for the County to understand the data location and scope....

24 Contractor shall comply with all laws, statutes, ordinances and regulations
25 as they may be amended from time to time...”

26 56. Whether by the drone policy or private contract, the County does not have the
27 authority to promulgate policies and procedures authorizing nonconsensual inspections
28 of private property absent an administrative warrant. (Marshall v. Barlow’s, Inc., 436 U.S.
307, 324 (1978) [striking down OSHA’s warrantless inspection scheme finding it
“unconstitutional insofar as it purports to authorize inspections without warrant.”].)

57. As alleged in greater detail herein, neither the drone policy nor the Scope of
Work represent adequate substitutes for the constitutional safeguards afforded by the

1 Fourth Amendment to protect the civil rights of property owners in the County, including
2 Cupp. Taken together, these documents – which represent official County policy applied
3 and put into official action - delegate the manner, method and operation of the use of
4 drones to search private property to the unfettered discretion of those County officials
5 engaged in the warrantless search. (See De La Cruz v. Quackenbush, 80 Cal.App.4th 775,
6 789-790 (2000) [“the regulatory scheme at issue does not provide an adequate substitute
7 for a warrant because it has neither a ‘properly defined scope’ nor a ‘limit on the
8 discretion of the officers.”])

9
10 58. What is most noticeable, however, is not so much what is stated in these
11 documents; rather, it is what is not stated. Nowhere in either the County’s drone policy or
12 the Scope of Work is the word “warrant” even mentioned, much less are there any
13 directives (or even encouragements) for Permit Sonoma officials to obtain a warrant
14 before using drones to conduct nonconsensual, non-exigent searches of private property.

15
16 59. In short, these documents, at best, impose only the vaguest limitations on the
17 discretion of County officials when conducting drone searches of private property
18 resulting in the proverbial “fox guarding the hen house.” The net result is the violation of
19 the constitutional rights of Cupp and other property owners within the County’s
20 jurisdiction.

21
22 **F. On March 27, 2020, Defendants Cablk and Hoffman Fly a Drone**
23 **Over the Subject Property Without a Warrant, and Without Cupp’s**
24 **Consent or Exigent Circumstances**

25 60. On information and belief, on March 27, 2020, *over one year after Defendant*
26 *Smith conducted his warrantless search of the subject property*, Defendants Cablk and
27 Hoffman, acting pursuant to and in accordance with the County’s drone policy and the
28 other documents referred to herein, flew a drone over the subject property, conducting a

1 search of the subject property, without first seeking an inspection warrant, and did so in
2 their official capacities acting under color of law.

3 61. At the time Defendants Cablk and Hoffman engaged in this warrantless search
4 of the subject property, neither individual had Cupp's consent to conduct the search. In
5 addition, they lacked exigent circumstances or any substantial legal justification
6 whatsoever for conducting the drone flyover other than simply to snoop and spy on the
7 subject property.
8

9 **G. Cupp v. Smith, Case No. 4:20-cv-03456 PJH**

10 62. On May 21, 2020, Cupp filed suit in *Cupp v. Smith*, Case No. 4:20-cv-03456
11 PJH, which is a related case.
12

13 **F. On July 20, 2020, the Sonoma Superior Court Issues an Inspection**
14 **Warrant Based on a False Affidavit of Probable Cause Executed by**
15 **Defendant Hoffman**

16 63. For unknown reasons, on July 20, 2020, one year and six months after
17 Defendant Smith conducted his warrantless search of the subject property, and nearly
18 four months after Defendants Cablk and Hoffman conducted the warrantless drone
19 flyover, Defendants finally sought the issuance of an inspection warrant from the Sonoma
20 Superior Court that, if it had been valid, would legally allow Defendants to search the
21 subject property.
22

23 64. The fact Defendants waited so long to seek an inspection warrant demonstrates
24 a lack of exigency to justify their warrantless searches of the subject property in the first
25 place. Moreover, throughout all this delay, Cupp continued to accrue per diem penalties
26 on the 2019 Citations of at least \$180.

27 65. To support the application for an inspection warrant for the subject property,
28 Defendant Hoffman submitted a Declaration of Todd Hoffman in Support of Ex Parte

1 Application for Inspection Warrant (“Declaration”) in his official capacity as an employee
2 of the County and, specifically, Permit Sonoma. Attached hereto as **Exhibit L**, and
3 incorporated herein, is a true and correct copy of Defendant Hoffman’s Declaration.
4

5 66. After a recitation of his qualifications, Defendant Hoffman states, “I possess
6 first-hand knowledge of the matters stated herein and if called to testify as a witness, I
7 could and would testify competently thereto.” (Exhibit K, Declaration, ¶ 15.)
8

9 67. However, Defendant Hoffman’s Declaration describes Defendant Smith’s
10 efforts to inspect the subject property in 2019, stating:

11 “Code Inspector A. Smith attempted to access the property in response to a
12 complaint regarding multiple violations. Inspector Smith was prevented
13 from accessing the property by the fence and gate. From the right of way, he
14 observed numerous violations...”

15 (Exhibit L, page 6 of 12, par. 19.)
16

17 68. This statement by Hoffman was false. Yet, it was submitted in support of the
18 application for an inspection warrant under penalty of perjury. Defendant Hoffman was
19 not present when Defendant Smith attempted to access the subject property, so there is
20 no way he could have first-hand knowledge of what did or did not happen, or what
21 Defendant Smith could or could not have observed when Smith went to the subject
22 property on February 15, 2019. Throughout the disputes between the County and Cupp
23 over the subject property, particularly in the *Cupp v. Smith* matter, Defendants have
24 accused Cupp of erecting a 9-foot fence around the subject property. This is the very fence
25 that blocked Defendant Smith from accessing the property. The alleged 9-foot fence is a
26 solid, wooden fence, a fact left out of Defendant Hoffman’s Declaration. Yet, somehow,
27 Defendant Hoffman claimed he had first-hand knowledge that Defendant Smith was able
28 to observe violations occurring on the property through this solid, wooden fence.

1 Defendant Smith would have needed x-ray vision, and Hoffman would have needed
2 psychic powers, for this sworn statement to be true.

3 69. Most striking of all, however, is the omission of any mention to the Superior
4 Court Judge that, in fact, Defendant Smith had already accessed the subject property
5 without an inspection warrant at the time the warrant was sought, which is how he was
6 able to observe any condition of the subject property. This fact is not reasonably in
7 dispute in the *Cupp v. Smith* matter.

8
9 70. Defendant Hoffman also discussed “an analysis of available chronological
10 satellite imagery,” which he avers informed him that several structures had been altered
11 in various ways. (Exhibit K, Declaration, page 8 of 12, par. 20.) In the very next paragraph
12 of the Declaration, Defendant Hoffman refers to “aerial imagery obtained on March 27,
13 2020,” which Defendant Hoffman refers to as being “Exhibits E1 & E2” to his Declaration.
14 This imagery, Hoffman declares, indicated to him not only that unpermitted construction
15 was occurring on the subject property, but also that the subject property was being used
16 as an illicit cannabis grow operation. Attached hereto as **Exhibit M**, and incorporated
17 herein, are true and correct copies of Exhibits E1 & E2 to Defendant Hoffman’s
18 Declaration.
19
20

21 71. At no point does Defendant Hoffman explain to the Court where he obtained
22 any of these photos, only stating they were from “aerial imagery” immediately after
23 referring to photos he obtained from “satellite imagery.” The implication of this omission
24 is that all the photos attached to the Declaration were obtained from imagery supplied by
25 a publicly available source such as Google Earth, etc., which would not require a warrant;
26 when in fact, the photos in Exhibit M represent photos obtained from the warrantless
27
28

1 drone search of the subject property conducted on March 27, 2020, a search Cupp
2 contends did require a warrant that Defendants did not possess at that time.

3 72. Based on Defendant Hoffman's false and misleading Declaration, Superior
4 Court Judge Shelley Averill issued an inspection warrant on July 20, 2022 without notice
5 to Cupp that allowed for forcible entry onto the subject property in the company of law
6 enforcement. Attached hereto as ***Exhibit N***, and incorporated herein, is a true and
7 correct copy of the inspection warrant issued by Judge Averill pursuant to Defendant
8 Hoffman's perjurious and misleading Declaration.
9

10 73. The case – Sonoma Superior Court Case No. SCV-266746 – was, thereafter,
11 immediately closed, giving Cupp no reasonable means or opportunity to appear and
12 challenge the issuance of the warrant or any of the detrimental effects that resulted from
13 it.
14

15 **G. On July 30, 2020, Defendants Harrington, Hoffman, Smith, and Five**
16 **Other County Officers, Including Law Enforcement, Enter Onto the**
17 **Subject Property Pursuant to the Inspection Warrant**

18 74. Despite Defendant Hoffman's concern that the subject property was being used
19 as an illicit cannabis grow operation, and despite his assertions of property owners being
20 able to rapidly remove evidence of a grow operation – all facts that were intended to cause
21 Judge Averill to issue an inspection warrant executable without notice to Cupp, allowing
22 forcible entry, and in the company of law enforcement – Defendants still waited an
23 additional ten days before taking any action to enter the subject property to abate any
24 alleged Code violations.
25

26 75. On July 30, 2020, Defendants Harrington, Hoffman, Smith, and on
27 information and belief, at least five, additional County officers, some of whom on
28 information and belief were employed by the Sonoma County Sheriff's Department and

1 other County agencies, acting pursuant to the inspection warrant issued on July 20, 2022,
2 entered upon the subject property. The operation was led by Defendant Harrington as the
3 senior Code Enforcement officer acting in her official capacity. Once upon the subject
4 property, Defendants and others broke down doors, entered the structures on the subject
5 property, and inflicted other physical damages to the subject property, all acting under
6 color of law.
7

8 76. Based on the July 30, 2020 inspection - or more accurately, raid - of the subject
9 property, Defendants issued seven, separate Notices and Orders. Of those seven Notices
10 and Orders, four generally allege “construction without permits,” two were for “unlawful
11 uses,” and one was for “a dangerous building,” which pertained to a barn on the subject
12 property. The remainder were violations related to the alleged presence of hemp at the
13 subject property.
14

15 **H. On July 31, 2020, in *Cupp v. Smith*, the Court Ordered Defendants**
16 **Not to Shut Off PG&E Services to the Subject Property Until After**
17 **Resolution of Cupp’s Application for TRO**

18 77. In *Cupp v. Smith*, Cupp sought a TRO to preserve the status quo of the dispute
19 involving the subject property. The Court set a briefing schedule and ordered Defendants
20 not to remove PG&E services (i.e., electricity and gas) from the subject property until after
21 the Court had resolved Cupp’s application for a TRO.
22

23 78. Although Defendants technically complied with the Court’s order, the day after
24 the Court denied Cupp’s application for a TRO, Defendants removed two electrical and
25 one gas meter from the subject property. One electrical meter supplied electricity to the
26 barn on the subject property. The other two meters supplied power to the residence on the
27 subject property, which was located at least 50 yards from the barn and had not been
28 deemed a “dangerous building” as a result of the July 30, 2022 raid. Defendants had no

1 reasonable basis for removing the meters from the residence, and in fact, did so on
2 information and belief as a form of punishment because Cupp had sought a TRO in *Cupp*
3 *v. Smith*.

4
5 79. The subject property was left without PG&E services for nineteen (19) months
6 thereafter. PG&E services were not restored until the day after the Court denied
7 Defendant Smith's motion for summary judgment in *Cupp v. Smith*. On information and
8 belief, Deputy County Counsel Michael King, who represents Smith in the *Cupp v. Smith*
9 matter, personally telephoned PG&E and instructed the utility to restore power at the
10 subject property the day after Smith's motion for summary judgment was denied. This is
11 based on the fact that a PG&E official contacted Cupp, confused, and asking who King was
12 and why he called PG&E. However, because of Defendants' actions or inactions, gas
13 services were still not restored at the subject property.
14

15 80. Consequently, for many months, the residence at the subject property was
16 rendered uninhabitable, causing significant harm and damage to Cupp personally and
17 financially.
18

19 **I. On December 11, 2020 and January 18 & 22, 2021, the County Proceeds**
20 **With the Administrative Abatement Hearing Against Cupp**

21 81. Finally, over a year after it was first noticed, the County proceeded with the
22 Abatement Hearing against Cupp. With regard to the 2019 Citations, the County argued
23 that Cupp never timely appealed those citations, so they were conclusive evidence of the
24 penalties against him. However, County Counsel Michael King had argued in the County's
25 12(b)(6) motion to dismiss in *Cupp v. Smith*, which the Court relied on, in part, in
26 dismissing Cupp's due process claim as moot and granting Defendant Smith's motion in
27 that case:
28

1 “Defendant’s filed their further reply...[and] In it, they stated they would
2 provide plaintiff [Cupp] an administrative hearing to challenge the citations
3 issued on February 19, 2019.”

4 The Court went on to state regarding Cupp’s claim for deprivation of due process:

5 “In any event, because Sonoma County has agreed to provide plaintiff an
6 administrative hearing to challenge the underlying February
7 19...citations...any claim premised on the denial of such a claim [of
8 deprivation of due process] appears moot.

9 (Order Granting Motion to Dismiss and Denying Motion to Disqualify Counsel,” p. 16, fn
10 4.)

11 82. In other words, the County said one thing to the Court to obtain a favorable
12 ruling on their Motion to Dismiss in *Cupp v. Smith*, but then attempted to do the exact
13 opposite when the time came for Cupp’s administrative hearing. This is further proof of the
14 County’s punitive stance with respect to Cupp, and the extent of their arbitrary and
15 capricious behavior.

16 83. In addition, at the administrative hearing, the County’s only evidence against
17 Cupp on either the 2019 or 2020 Citations pertained to evidence gathered during
18 Defendant Smith’s warrantless search on February 15, 2019 or the July 30, 2020 raid of the
19 subject property, which Cupp contends was executed based on a false and misleading
20 Declaration signed and submitted to the Superior Court by Defendant Hoffman pursuant
21 to the County’s official policies, practices and procedures as further alleged herein.

22
23 **J. On June 1, 2022, Defendants Cablk and Hoffman Fly a Drone Over the**
24 **Subject Property, Again Without a Warrant, Cupp’s Consent, or Exigent**
25 **Circumstances, and After Fact Discovery Had Closed in *Cupp v. Smith***

26 84. On May 25, 2022, the parties in the *Cupp v. Smith* matter participated in a
27 Magistrate Settlement Conference with the Hon. Mag. Judge Kandis Westmore. Mag.
28 Judge Westmore adjourned the May 25, 2022 conference and ordered the parties to
reconvene on August 5, 2022.

1 85. Fact discovery in *Cupp v. Smith* closed on January 24, 2022 pursuant to the
2 Court's Scheduling Order. No agreement to extend this date was made, nor was the date
3 extended by the Court.

4 86. On June 1, 2022, and on information and belief, Defendants Cablk and
5 Hoffman, again, flew a drone over the subject property, once again without a warrant,
6 without Cupp's consent, and without exigent circumstances, all while acting pursuant to
7 the County's official policies, practices, customs and procedures, in their official
8 capacities, acting under color of law.

9
10 **K. Pursuant to the County's Drone Policy, Defendants Routinely Fly**
11 **Drones Over Private Properties, Conducting Searches, Without Ever**
12 **First Obtaining Warrants, and in Violation of FAA Regulations**

13 ***(1) The FAA Regulates the County's Use of Drones***

14 87. The Federal Aviation Administration has promulgated regulations for the
15 community and recreational use of drones, which apply to the County's use of drones as
16 alleged herein. These regulations can be found at 14 C.F.R. Part 107 and are collectively
17 referred to as the "Part 107" rules.

18 88. Among other restrictions and requirements, including but not limited to testing,
19 certification, and reporting requirements, as an operator of drones that presumably would
20 be categorized as "small unmanned aircraft" (meaning they weigh less than 55 pounds), the
21 County is prohibited from flying a drone higher than 400 feet above the ground unless
22 operating in the vicinity of an airport in which case the height requirements differ (but are
23 not relevant at this time for purposes of this lawsuit). 14 C.F.R. § 107.51(b).

24 89. In addition, the County is prohibited from operating a drone over any human
25 being unless (a) "the operation is within or over a closed- or restricted-access site and all
26 human beings located within the closed- or restricted-access site must be on notice that a
27
28

1 small unmanned aircraft may fly over them;" or (b) the small aircraft does not maintain
2 sustained flight over any human being unless the human being is "directly participating in
3 the operation of the small unmanned aircraft;" or the human being is "located under a
4 covered structure or inside a stationary vehicle that can provide reasonable protection from
5 a falling small unmanned aircraft." 14 C.F.R. § 107.125.
6

7 90. Despite these regulations (and others which on information and belief, the
8 County does not follow), and in addition to its policies as alleged herein, the County –
9 through Permit Sonoma and the individual Defendants, including DOES 1-50, maintain a
10 custom, practice and procedure of routinely using drones to inspect and search private
11 property of the residents of the County, without obtaining a warrant beforehand, and in
12 disregard of the FAA regulations.
13

14 91. Specifically, the County routinely takes the official position publicly in cases
15 brought by residents against the County, or by the County against its residents, in Superior
16 Court filings, that the County or its Permit Sonoma officials do not need a warrant to inspect
17 private property because they operate their drones in "navigable airspace," relying on
18 California v. Ciraolo, 476 U.S. 207 (1986). Not only does Ciraolo not involve the use of
19 drones, but the County's public position admits it routinely violates FAA regulations in its
20 use of drones to inspect private property.
21

22 92. According to FAA regulations, "navigable airspace" is defined as "airspace at and
23 above the *minimum flight altitudes* prescribed by or under this chapter, including airspace
24 needed for safe takeoff and landing." 14 C.F.R. § 1.1. For airplanes, the minimum flight
25 altitude while flying over congested areas or open air assemblies of persons is 1,000 feet
26 above the highest obstacle within a horizontal radius of 2,000 feet. 14 C.F.R. § 91.119(b). If
27 the County's public position in its state court filings is true and not misleading the judicial
28

1 officers of the County, then the County, Permit Sonoma, and these Defendants have a
2 policy, custom, practice or procedure of operating drones as high as 1,000 feet above the
3 ground, which would not require a warrant. However, as alleged above, drones are not
4 permitted to fly that high without violating FAA regulations.

5
6 93. In truth, the County's stated position appears to depend on the issues at stake.
7 Where the issue is one alleging the lack of a warrant to conduct an inspection, the County
8 asserts its Permit Sonoma officials fly their drones in navigable airspace; no warrant is
9 needed. When other issues are raised, the County takes the position that its actions comply
10 with federal regulations. Respectfully, the County cannot have it both ways.

11
12 ***(2) The Unconstitutional Wrongs Committed Against Cupp by
Defendants are not Part of Some Isolated Case***

13
14 94. Cupp has obtained sworn statements from six (6) residents of the County of
15 Sonoma attesting to the County's use of drones without warrants to search their property,
16 in a manner prohibited by one or more FAA regulations. Attached hereto as **Exhibits**
17 **O(A).1-(A)6** are true and correct copies of Declarations obtained by Cupp.

18 95. In addition, Cupp has interviewed through his counsel at least three (3),
19 additional individuals who have been subjected to similar drone-related behavior,
20 warrantless searches of their private property, due process violations, and other violations
21 of federal and state statutory and constitutional protections by the County. These
22 individuals have identified or can identify as many as twenty (20) more individuals with
23 the same or similar experiences as alleged herein, involving warrantless searches of their
24 private property and the use of drones to conduct aerial surveillance of their property. In
25 the coming weeks, Cupp will come forward with additional proof of these allegations in the
26 form of Declarations and additional actions, and respectfully requests the Court grant leave
27 at an appropriate time to supplement these allegations and conduct discovery to bear them
28

1 out. In many instances, residents of the County have expressed sincere fear of reprisal by
2 the County as well as these individuals Defendants, specifically.

3 96. In at least one instance, a resident of the County recounted how the resident was
4 threatened with additional, punitive and more expensive Code violations by Defendant
5 Hoffman when the resident confronted Defendant Hoffman on the resident's private
6 property, which Defendant Hoffman (who at the time had a shaved head and visible tatoos,
7 leading the resident to believe he was an intruder) had entered the resident's property
8 without a warrant and conducted a search without consent or exigent circumstances.
9

10 97. When the resident ordered Defendant Hoffman off the property, Defendant
11 Hoffman threatened her, "Well, now, I am just getting started with violating you." That
12 resident has now been on the receiving end of some tens of thousands of dollars in alleged
13 Code violations and penalties by the County and, specifically, these Defendants, and is in
14 danger of losing her property outright as a result of Defendants' actions, which have been
15 undertaken in furtherance of unconstitutional policies and constitute an arbitrary and
16 capricious, punitive pattern of behavior, custom and practices.
17

18 98. Understandably, individuals confronting this situation are fearful of the
19 repercussions they may experience by coming forward. Some will overcome this fear; some
20 will not. However, in all but one situation interviewed thus far, the prohibited and
21 unconstitutional conduct involves the same cast of characters – the Defendants that are
22 named in this lawsuit, always acting under color of law of their public offices or employment
23 with the County, and pursuant to the County's unconstitutional policies, practices, customs
24 and procedures as alleged herein and as will be subject to supplementation and amendment
25 as further investigation and discovery is conducted, at the Court's discretion.
26
27
28

1 99. Indeed, it appears nearly impossible to determine precisely how many instances
2 exist where the County, Permit Sonoma, and these Defendants have conducted inspections
3 of private property without a warrant, conducted aerial surveillance of private property
4 without a warrant, applied for inspection warrants after the fact using the same or similar
5 false allegations like those used against Cupp as alleged herein, and generally deprived
6 residents of their constitutional rights to enjoy private property free from the government's
7 prying eyes.

8
9 100. On June 24, 2022, through his counsel, Cupp issued a California Public Records
10 Act ("PRA") request to the County seeking a number of documents and records pertaining
11 to this question, including but not limited to warrantless searches of private property in the
12 County, the use of drones to accomplish aerial surveillance, and other similar documents
13 and records. To date, the County has only partially complied with Cupp's request, with
14 County Counsel's office complaining the County cannot comply because their records are
15 not kept in the manner requested. However, the County has done nothing to identify or
16 assist Cupp in properly wording a request for the records, which is expressly required by the
17 PRA.
18
19

20 101. In addition, despite an exhaustive search of the Sonoma County Superior Court's
21 online case records, no court records of applications for inspection warrants can be
22 identified without first knowing a case number, property address or defendant's identity. In
23 other words, one cannot look up such cases by reference to the County of Sonoma, Permit
24 Sonoma, or Permit Resources Management Department as the party applying for an
25 inspection warrant.
26

27 102. Thus, at this time, it is not known how many times the County has applied for
28 inspection warrants, whether the application was before or after a warrantless search had

1 already been conducted, or to review what evidentiary support was submitted in support of
2 the issuance of the inspection warrants. On information and belief, based on representations
3 made by County Counsel, there must be many such instances. When asked to produce this
4 information as part of Cupp's PRA Request, the County indicated that this request would
5 require thousands of hours of personnel research and cost Cupp a tremendous amount of
6 money because, again and allegedly, the County does not keep track of their inspection
7 warrants by case number or property address. Yet, to date, the County has not identified
8 how it keeps its records, whether it keeps records, how many hours would be required to
9 locate the records, or how much Cupp would be charged for this information.
10

11
12 103. One of the individuals interviewed by Cupp's counsel thus far had a Declaration
13 submitted to the Court by Defendant Hoffman that was nearly identical to the one used
14 against Cupp, particularly with reference to the use of "aerial imagery" as alleged herein, and
15 which was, itself, a "cut and paste" job bearing the wrong name of the defendant, evidencing
16 that the Declaration used by Hoffman is recycled again and again, case-by-case. Thus, on
17 information and belief, Cupp's situation as alleged herein is not an isolated one; rather, it is
18 activity undertaken under color of law pursuant to an unconstitutional policy, a policy that
19 (while facially constitutional) was adopted for an improper motive; i.e., to the County's Code
20 Enforcement regime as a money-making venture for the County; and/or it is activity
21 undertaken as part of an unconstitutional practice, custom or procedure.
22

23
24 104. The smokescreen thrown up by the County is but one more example of the
25 County's efforts to conceal the unconstitutional policies and their wrongful and
26 unconstitutional, practices, customs and procedures as alleged herein. Other instances of
27 the same or similar activity engaged in by these Defendants, acting under color of law on
28 behalf of the County, are relevant proof of an unconstitutional practice, custom or procedure

1 sufficient for a finding of liability under Monell v. Dept. of Soc. Sv'cs., 436 U.S. 658 (1978).
2 *See, e.g., Price v. Sery*, 513 F.3d 962 (9th Cir. 2008) [facially constitutional policy did not
3 exonerate public entity from Monell liability where actual practice was unconstitutional use
4 of excessive force]; *Gregory v. City of Louisville*, 444 F.3d 725 (6th Cir. 2006); *Cash v.*
5 *Hamilton County Dept. of Adult Probation*, 388 F.3d 539 (6th Cir. 2004).

7 **V.**

8 **COUNT ONE**

9 **(42 U.S.C. § 1983 – VIOLATION OF FOURTH AMENDMENT)**

10 **(Against All Defendants)**

11
12 105. Cupp realleges each and every allegation contained in this Complaint and
13 incorporates them as if set forth in full in Count One of this Complaint.

14 106. The Fourth Amendment to the U.S. Constitution provides:

15 *“The right of the people to be secure in their persons, houses, papers, and*
16 *effects, against unreasonable searches and seizures, shall not be violated;*
17 *and no Warrants shall issue but upon probable cause, supported by Oath*
18 *or affirmation, and particularly describing the place to be searched, and*
19 *the persons or things to be seized.”*

20 107. By doing the acts complained of herein, Defendants, and each of them, acting
21 under color of law, county ordinances, regulations, official policies or procedures, or
22 customs and practices, in violation of 42 U.S.C. § 1983, have deprived Cupp, and continue
23 to deprive Cupp, of the right against unreasonable searches of the subject property as
24 guaranteed by the Fourth Amendment.

25 108. Defendants violated Cupp’s right to be free from unreasonable searches under
26 the Fourth Amendment by, among other things:

1 (A) Conducting a search of the subject property using a drone on or about
2 March 27, 2020, without an inspection warrant, and without Cupp's consent and without
3 exigent circumstances;

4 (B) Conducting another search of the subject property using a drone on or
5 about June 1, 2022, again without a warrant, and without Cupp's consent and without
6 exigent circumstances;

7
8 109. At the time Defendants undertook the above-referenced conduct, their acts
9 and omissions as alleged herein are indicative and representative of unconstitutional
10 policies promulgated by the County and/or a repeated course of conduct by Defendants,
11 and each of them, in unconstitutionally enforcing the County's policies, which is
12 tantamount to a custom, practice or procedure of the County and its agency, Permit
13 Sonoma, of condoning and encouraging the disregard of the constitutional rights of the
14 residents of the County, as alleged herein.

15
16 110. As a direct and proximate result of Defendants' illegal conduct, Cupp has
17 suffered actual injuries and damages to his person, including general damages, as well as
18 financial and pecuniary damages to the subject property in an amount according to proof
19 at trial.

20
21 **WHEREFORE, Cupp prays for Judgment as set forth below.**

22 **COUNT TWO**

23 **(VIOLATION OF 42 U.S.C. § 1983 – VIOLATION OF FIFTH AMENDMENT)**

24 **(Against All Defendants)**

25
26 111. Cupp realleges each and every allegation contained in this Complaint and
27 incorporates them as if set forth in full in Count Two of this Complaint.

28 112. The Fifth Amendment to the U.S. Constitution provides, in part:

1 *“No person shall be... deprived of life, liberty, or property, without due*
2 *process of law; nor shall private property be taken for public use, without*
3 *just compensation.”*

4 112. In doing the acts complained of herein, including but not limited to removing
5 electricity and gas meters to the residence located at the subject property, Defendants,
6 and each of them, did engage in a taking of the subject property without just
7 compensation in violation of the Fifth Amendment, which is a violation of 42 U.S.C.
8 Section 1983, rendering the subject property of less value and uninhabitable.

9 113. In addition, at various times since July 30, 2022, Defendants, and each of
10 them, have wrongfully insisted and required Cupp to reduce the residence from a 4-
11 bedroom house to a 1-bedroom house in order to obtain Defendant’s approval for a septic
12 system that had already been approved by the County many years ago.

13 114. At the time Defendants undertook the above-referenced conduct, their acts
14 and omissions as alleged herein are indicative and representative of unconstitutional
15 policies promulgated by the County and/or a repeated course of conduct by Defendants,
16 and each of them, in unconstitutionally enforcing the County’s policies, which is
17 tantamount to a custom, practice or procedure of the County and its agency, Permit
18 Sonoma, of condoning and encouraging the disregard of the constitutional rights of the
19 residents of the County, as alleged herein.

20 115. These actions, and the others by Defendants were undertaken arbitrarily,
21 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp’s
22 constitutional rights and has directly and proximately caused Cupp to sustain actual
23 injuries and damages to his person as well as his financial and pecuniary interest in the
24 subject property, which has had its value substantially reduced as a result of Defendants’
25 actions, in an amount according to proof at trial.

1 **WHEREFORE, Cupp prays for Judgment as set forth below.**

2 **COUNT THREE**

3 **(VIOLATION OF 42 U.S.C. § 1983 – VIOLATION OF FOURTEENTH**
4 **AMENDMENT)**

5 **(Against All Defendants)**

6 116. Cupp realleges each and every allegation contained in this Complaint and
7 incorporates them as if set forth in full in Count Three of this Complaint.

8 117. The Fourteenth Amendment to the U.S. Constitution provides, in part:

9 *“...No State shall make or enforce any law which shall abridge the*
10 *privileges or immunities of citizens of the United States; nor shall any State*
11 *deprive any person of life, liberty, or property, without due process of*
12 *law...”*

13 118. By entering the subject property without advance notice or an opportunity for
14 a hearing, and doing the other acts as complained of herein, Defendants violated the
15 Fourteenth Amendment to the U.S. Constitution, which is also a violation of 42 U.S.C.
16 Section 1983.

17 119. As a direct and proximate result of Defendants’ illegal conduct, Cupp has
18 suffered actual injuries and damages to his person, including general damages, as well as
19 financial and pecuniary damages to the subject property in an amount according to proof
20 at trial.

21 120. At the time Defendants undertook the above-referenced conduct, their acts
22 and omissions as alleged herein are indicative and representative of unconstitutional
23 policies promulgated by the County and/or a repeated course of conduct by Defendants,
24 and each of them, in unconstitutionally enforcing the County’s policies, which is
25 tantamount to a custom, practice or procedure of the County and its agency, Permit
26
27
28

1 Sonoma, of condoning and encouraging the disregard of the constitutional rights of the
2 residents of the County, as alleged herein.

3 121. These actions, and the others by Defendants were undertaken arbitrarily,
4 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's
5 constitutional rights and has directly and proximately caused Cupp to sustain actual
6 injuries and damages to his person as well as his financial and pecuniary interest in the
7 subject property, which has had its value substantially reduced as a result of Defendants'
8 actions, in an amount according to proof at trial.

9
10 **WHEREFORE, Cupp prays for Judgment as set forth below.**

11
12 **COUNT FOUR**

13 **(VIOLATION OF 42 U.S.C. § 1983 - CONSPIRACY TO VIOLATE FOURTH**
14 **AMENDMENT)**

15 **(Against All Defendants)**

16 122. Cupp realleges each and every allegation contained in this Complaint and
17 incorporates them as if set forth in full in Count Four of this Complaint.

18 123. Defendants, and each of them, conspired with each other to violate Cupp's
19 civil rights, in particular, the Fourth Amendment's requirement that a warrant be
20 obtained before conducting searches of private property, which the U.S. Supreme Court
21 has held applicable to inspections by officials such as Defendants, and each of them,
22 which is also a violation of 42 U.S.C. Section 1983.

24 124. In particular, Defendant Hoffman, acting in his official capacity, filed or
25 caused to be filed a Declaration in support of an inspection warrant on July 20, 2022 in
26 the Superior Court of the State of California that was false and intended to mislead a
27 judicial officer; or did, in fact, mislead a judicial officer, as alleged herein. At all times,
28 Defendant Hoffman knew his Declaration was false and misleading, and that Defendant

1 Smith had already accessed the subject property on February 15, 2019 without a warrant
2 and that one or more individuals acting on behalf of the County, including but not limited
3 to Defendants Hoffman and Cablk, had used a drone on March 27, 2020 to conduct aerial
4 surveillance of the subject property without a warrant an in violation of FAA regulations.
5

6 125. On information and belief, Defendants Hoffman, Smith and Cablk were acting
7 at the express direction of, under the supervision of, under the control of, or with the
8 express or implied approval of the remaining Defendants, and each of them, to do the acts
9 complained of herein.
10

11 126. By conspiring to enter the subject property of Cupp without a warrant, without
12 a properly issued warrant, without consent, and without exigent circumstances,
13 Defendants, and each of them, were acting according to express policies enacted by the
14 County; or they were acting pursuant to an unconstitutional and illegal pattern or course
15 of conduct designed to deprive the residents of the County of their constitutional right to
16 be free from government intrusion upon their private property.
17

18 127. These actions, and the others by Defendants were undertaken arbitrarily,
19 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's
20 constitutional rights and has directly and proximately caused Cupp to sustain actual
21 injuries and damages to his person as well as his financial and pecuniary interest in the
22 subject property, which has had its value substantially reduced as a result of Defendants'
23 actions, in an amount according to proof at trial.
24

25 **WHEREFORE, Cupp prays for Judgment as set forth below.**
26
27
28

1 **COUNT FIVE**

2 **(VIOLATION OF 42 U.S.C. § 1983 – CONSPIRACY TO VIOLATE**
3 **FOURTEENTH AMENDMENT)**

4 **(Against All Defendants)**

5 128. Cupp realleges each and every allegation contained in this Complaint and
6 incorporates them as if set forth in full in Count Five of this Complaint.

7 129. In doing the acts complained of herein, Defendants, and each of them,
8 conspired with each other to violate Cupp's civil rights, in particular, the Fourteenth
9 Amendment right to due process of law, which is also a violation of 42 U.S.C. Section
10 1983.
11

12 130. In doing these acts, Defendants, and each of them, were acting according to
13 express policies enacted by the County; or they were acting pursuant to an
14 unconstitutional and illegal pattern or course of conduct designed to deprive the residents
15 of the County of their constitutional right to due process of law.
16

17 131. These actions, and the others by Defendants were undertaken arbitrarily,
18 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's
19 constitutional rights and has directly and proximately caused Cupp to sustain actual
20 injuries and damages to his person as well as his financial and pecuniary interest in the
21 subject property, which has had its value substantially reduced as a result of Defendants'
22 actions, in an amount according to proof at trial.
23

24 **WHEREFORE, Cupp prays for Judgment as set forth below.**
25
26
27
28

1 **COUNT SIX**

2 **(VIOLATION OF ART. I, § 7 OF THE CALIFORNIA CONSTITUTION)**

3 **(Against All Defendants)**

4
5 132. Cupp realleges each and every allegation contained in this Complaint and
6 incorporates them as if set forth in full in Count Six of this Complaint.

7 133. Article I, Section 7 of the California Constitution prohibits the deprivation of
8 property without advance notice and the opportunity for a hearing.

9 134. By entering the subject property, without a warrant issued upon notice or with
10 a warrant that was based on a false and misleading Declaration by Defendant Hoffman,
11 and destroying or damaging the subject property, without advance notice to Cupp, and
12 then immediately causing the state court inspection warrant case to be closed so that
13 Cupp had not meaningful opportunity to contest the issuance of an inspection warrant,
14 Defendants violated Article I, Section 7 of the California Constitution.

15
16 135. By taking and removing electric and gas meters from the subject property,
17 particularly the residence located on the subject property, by insisting or requiring that
18 Cupp reduce the number of bedrooms of the residence from four (4) to one (1) to obtain
19 Defendants' approval on an already-approved septic permit, and by recording or causing
20 to be recorded an abatement lien on the subject property clouding Cupp's title,
21 Defendants violated Article I, Section 7 of the California Constitution.

22
23 136. In doing these acts, Defendants, and each of them, were acting according to
24 express policies enacted by the County; or they were acting pursuant to an
25 unconstitutional and illegal pattern or course of conduct designed to deprive the residents
26 of the County of their constitutional right to due process of law.
27
28

1 137. These actions, and the others by Defendants were undertaken arbitrarily,
2 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's
3 constitutional rights and has directly and proximately caused Cupp to sustain actual
4 injuries and damages to his person as well as his financial and pecuniary interest in the
5 subject property, which has had its value substantially reduced as a result of Defendants'
6 actions, in an amount according to proof at trial.

8 138. Under California Government Code section 820(a), the individual Defendants
9 are liable for damages for their own misconduct.

10 139. Under California Government Code section 815.2(a), the County is vicariously
11 liable for the conduct of the individual Defendants that was performed within the course
12 and scope of their employment.

14 **WHEREFORE, Cupp prays for Judgment as set forth below.**

15 **COUNT SEVEN**

16 **(VIOLATION OF ART. I, § 13 OF THE CALIFORNIA CONSTITUTION)**

17 **(Against All Defendants)**

18
19 140. Cupp realleges each and every allegation contained in this Complaint and
20 incorporates them as if set forth in full in Count Seven of this Complaint.

21 141. California Constitution, Article I, Section 13 provides:

22 *The California Constitution provides that "the right of the people to be*
23 *secure in their persons, houses, papers and effects against unreasonable*
24 *seizures and searches may not be violated; and a warrant may not issue*
25 *except on probable cause, supported by oath or affirmation, particularly*
26 *describing the place to be searched and the persons and things to be*
27 *seized."*

28 142. In doing the acts complained of herein, Defendants violated California's
Constitution, Article I, Section 13.

1 143. In doing these acts, Defendants, and each of them, were acting according to
2 express policies enacted by the County; or they were acting pursuant to an
3 unconstitutional and illegal pattern or course of conduct designed to deprive the residents
4 of the County of their constitutional right to due process of law.
5

6 144. These actions, and the others by Defendants were undertaken arbitrarily,
7 capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's
8 constitutional rights and has directly and proximately caused Cupp to sustain actual
9 injuries and damages to his person as well as his financial and pecuniary interest in the
10 subject property, which has had its value substantially reduced as a result of Defendants'
11 actions, in an amount according to proof at trial.
12

13 145. Under California Government Code section 820(a), the individual Defendants
14 are liable for damages for their own misconduct.

15 146. Under California Government Code section 815.2(a), the County is vicariously
16 liable for the conduct of the individual Defendants that was performed within the course
17 and scope of their employment.
18

19 **WHEREFORE, Cupp prays for Judgment as set forth below.**

20 **COUNT EIGHT**

21 **(TRESPASS)**

22 **(Against All Defendants)**

23 147. Cupp realleges each and every allegation contained in this Complaint and
24 incorporates them as if set forth in full in Count Eight of this Complaint.
25

26 148. At all times alleged herein, Cupp legally possessed the subject property and
27 had a reasonable expectation of privacy over the subject property.
28

1 149. At all time alleged herein, Defendants' entry onto the subject property was not
2 authorized by a warrant, or a properly issued warrant, was without Cupp's consent, and
3 without any privilege on the part of Defendants to enter upon the subject property.
4

5 150. As a direct and proximate result, Cupp has sustained actual injuries and
6 damages to his person as well as his financial and pecuniary interest in the subject
7 property, which has had its value substantially reduced as a result of Defendants' actions,
8 in an amount according to proof at trial.

9 151. These actions, and the others by the individual Defendants were done
10 intentionally, knowingly, maliciously and with an evil or improper motive amounting to
11 malice; or with a knowing and conscious disregard for Cupp's rights; in a manner and
12 according to methods that no civilized society should be required to tolerate. As such, the
13 individual Defendants may, and should be, held liable for punitive or exemplary damages
14 in order to deter such conduct in the future. undertaken arbitrarily, capriciously,
15 punitively, and in furtherance of illegal conduct that violated Cupp's constitutional rights
16 and has
17
18

19 152. Under California Government Code section 820(a), the individual Defendants
20 are liable for damages for their own misconduct.

21 153. Under California Government Code section 815.2(a), the County is vicariously
22 liable for the conduct of the individual Defendants that was performed within the course
23 and scope of their employment, though not for any award of punitive damages and no
24 such award is sought against the County; however, the County may be required to
25 indemnify the individual Defendants for some or all of the damages alleged herein.
26

27 **WHEREFORE, Cupp prays for Judgment as set forth below.**
28

COUNT NINE
(INVASION OF PRIVACY)
(Against All Defendants)

154. Cupp realleges each and every allegation contained in this Complaint and incorporates them as if set forth in full in Count Nine of this Complaint.

155. At all times alleged herein, Cupp legally possessed the subject property and had a reasonable expectation of privacy over the subject property.

156. At all time alleged herein, Defendants' entered upon the subject property either physically or through the use of electronic surveillance, videography or photography, which was not authorized by a warrant, or a properly issued warrant, was without Cupp's consent, and without any privilege on the part of Defendants to enter upon the subject property.

157. As a direct and proximate result, Cupp has sustained actual injuries and damages to his person as well as his financial and pecuniary interest in the subject property, which has had its value substantially reduced as a result of Defendants' actions, in an amount according to proof at trial.

158. These actions, and the others by the individual Defendants were done intentionally, knowingly, maliciously and with an evil or improper motive amounting to malice; or with a knowing and conscious disregard for Cupp's rights; in a manner and according to methods that no civilized society should be required to tolerate. As such, the individual Defendants may, and should be, held liable for punitive or exemplary damages in order to deter such conduct in the future. undertaken arbitrarily, capriciously, punitively, and in furtherance of illegal conduct that violated Cupp's constitutional rights and has

159. Under California Government Code section 820(a), the individual Defendants are liable for damages for their own misconduct.

WHEREFORE, Cupp prays for Judgment as set forth below.

RELIEF SOUGHT

1. A declaration that the actions of Defendants', and each of them, were and are unlawful and unconstitutional;

3. A temporary restraining order and preliminary and permanent injunction enjoining Defendants, and each of them, their agents and employees, from using drones to conduct inspections or searches of the private property of the residents of the County of



1 Sonoma without a warrant; unless Defendants, and each of them, their agents and
2 employees have the consent of the person in lawful possession of the property, unless the
3 property presents exigent circumstances, or unless the property is “open field;
4

5 4. A temporary restraining order and preliminary and permanent injunction
6 enjoining Defendants, and each of them, their agents and employees, from using drones
7 to conduct inspections or searches of the private property at a height greater than 400 feet
8 above the ground;

9 5. For damages and punitive damages, according to proof at trial;

10 6. For costs and attorney’s fees incurred in this action; and

11 7. For such other and further relief as this Court deems is just and proper.
12

13 Respectfully submitted,

14 Dated: March 6, 2023

YOUNG LAW GROUP

15
16 By: /s/Eric G. Young, Esq.
17 ERIC G. YOUNG, ESQ., Attorneys for
18 Plaintiff RONALD CUPP

19 **VII.**

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff RONALD CUPP hereby demands a trial by jury on all counts and upon all
22 relief sought herein that are so triable.

23 Dated: March 6, 2023

YOUNG LAW GROUP

24
25
26 By: /s/Eric G. Young, Esq.
27 ERIC G. YOUNG, ESQ., Attorneys for
28 Plaintiff RONALD CUPP